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By U.S. Mail and E-Mail

October 10, 2014

Acting Commissioner Chester McPherson
c/o Adam Levi, Assistant General Counsel
District of Columbia Department of
Insurance, Securities and Banking
810 First Street, NE, Suite 701
Washington, D.C. 20002

Dear Acting Commissioner McPherson:

I write on behalf of Group Hospitalization and Medical Services, Inc. (“GHMSI”) in response to Paragraph 2(b) of the DISB’s Fourth Scheduling Order.

On September 15, 2014, non-party D.C. Appleseed (“Appleseed”) submitted a letter to the DISB seeking access to documents that contain proprietary, confidential, competitively sensitive, and trade secret information of the Blue Cross Blue Shield Association (“BCBSA”) and GHMSI (collectively the “protected information”). Appleseed’s request for this protected information should be denied for multiple reasons.

As a threshold matter, Appleseed and its consultants have been granted access to vast amounts of data and other information throughout this proceeding. Appleseed—which is not a party—has been provided information far beyond what is required under the administrative rules, which do not allow for civil litigation-type discovery of the sort Appleseed has continually sought. Numerous types of competitive and sensitive information are protected from disclosure under multiple provisions of D.C. law. *See, e.g.*, GHMSI’s November 9, 2012 submission at pp. 2-3; GHMSI’s February 4, 2014 submission at p. 2. Appleseed’s September 15 letter seeks exactly that type of information and fails to cite to any provision of D.C. law that would allow the DISB to ignore GHMSI’s confidentiality designations and disclose protected information.

Appleseed also fails to demonstrate why it needs access to the protected information that it seeks. Appleseed has already used the copious amounts materials provided to it and to its consultants throughout this proceeding, in order to generate its own surplus model and analysis. Although that analysis is seriously flawed, those flaws do not arise from any lack of information on the part of Appleseed.

These new requests, in fact, do not relate to Appleseed's analysis or its own arguments, but appear to be efforts by Appleseed to "double check" statements made by witnesses at the DISB hearing. That is not the role of Appleseed in this proceeding. Appleseed has fully and fairly been heard on the issues, and the Commissioner can certainly determine for himself the extent to which the parties' positions are supported by the evidence.

Nothing in the D.C. Court of Appeals decision requires or justifies the extraordinary disclosures sought by Appleseed here. Even though it is the only authority on which Appleseed relies, that decision, in fact, undermines Appleseed's position. As explained in GHMSI's February 4, 2014 letter on this same topic, Appleseed is relying exclusively on a footnote that merely states, in *dicta*, that the Commissioner has a role to play in ensuring that GHMSI discloses information "necessary to the development of analyses by participants that contribute to the Commissioner's determination." *D.C. Appleseed Center for Law & Justice, Inc. v. DISB*, 54 A.3d 1188, 1219 n.41 (D.C. 2012). This standard has been met here. Appleseed has developed and presented to the Commissioner its detailed analysis. There is no basis for Appleseed to now go further and attempt to convert this footnote into a right to civil discovery.

For these reasons, and those articulated below, each of Appleseed's four specific requests for documents should be rejected:

1. ***GHMSI's Three-Year Plan.*** Appleseed seeks GHMSI's three-year plan for 2014-2016. The Company's three-year business plan is among its most competitively sensitive documents. Like the business plan of any company, it reveals GHMSI's key business strategy and its plans for how that strategy will be implemented over time. Appleseed has failed to articulate any need for this document other than wanting to see "what GHMSI and the board actually believe its results will be." Appleseed apparently speculates—baselessly—that GHMSI's plan may have different projections from the projections made by GHMSI's CEO at the hearing. This speculation provides no basis for disclosing confidential information to Appleseed. GHMSI invites the Commissioner to look at the plan for himself, and that is certainly a determination that he can make without Appleseed's help. There is simply no justification for the disclosure of this highly sensitive information.
2. ***Attachment B.*** Appleseed seeks Attachment B to GHMSI's September 5 submission, a confidential document that contains, among other things, the BCBSA rules and requirements triggered when a Blue Cross Blue Shield plan reaches certain RBC-ACL levels. The information in Attachment B, however, is confidential and proprietary information of the BCBSA, not GHMSI. GHMSI purposely crafted its submission to present a full public description of the BCBSA's processes in its answer, while putting confidential details that the BCBSA had requested remain confidential in the attachment. The processes at issue here are developed and maintained by the BCBSA, and BCBSA

continues to request that this additional detail in Attachment B be maintained in confidence.

BCBSA is accountable to Blue Cross Blue Shield licensees in all fifty states, and its confidential and proprietary documents should not be subject to public disclosure in this proceeding. GHMSI's extensive and public description of the relevant BCBSA surplus standards and their impact upon the Company is more than sufficient for Appleseed to present its case.

3. ***Attachment C.*** Appleseed likewise fails to articulate a valid need to review the protected information in Attachment C to GHMSI's September 5 submission. Appleseed is wrong to argue that the document relies only on "publicly reported data." Information in the document was collected from, among other sources, the confidential and proprietary information of the BCBSA and it contains analyses that combine GHMSI's interpretation of data relating to other plans and its own data. The only justification Appleseed offers for seeking the document is that the "information is relevant to the Commissioner's determination" and that Appleseed "would like to see GHMSI's analysis." Nothing in DC law or in the DC Court of Appeals opinion entitles Appleseed to information that it would merely "like to see."

Equally important, none of this information is even relevant to these proceedings. Attachment C addresses GHMSI's administrative efficiency. Administrative costs are not part of surplus—they are recovered in the year in which they are incurred. Appleseed's argument about "efficiency" is based on a clear error of law, as GHMSI discussed in its Responses to the Third Scheduling Order. GHMSI provided the information in Attachment C in response to the Commissioner's request, but that information has no relevance to any decision that is actually at issue in this proceeding.

4. ***Milliman's Confidential Information.*** Finally, Appleseed seeks protected information that Milliman provided to Rector as part of the background to this proceeding. This request is a red herring. Appleseed has been provided all information necessary to undertake its own analysis of whether or not GHMSI's 2011 year-end surplus was excessive. Throughout the course of these proceedings, Rector, GHMSI, and Milliman have shared significant amounts of analysis, data, and other information with Appleseed and its consultants. Rector and DISB provided lengthy and detailed responses to Appleseed's specific questions at the time that Appleseed was performing its own analysis. *See, e.g.*, Rector letter of March 7, 2014 and DISB letters of March 14, April 25, and May 13, 2014. In addition, DISB, Rector, and GHMSI had several meetings at which Rector answered the technical questions of Appleseed and its consultants. *See, e.g.*, DISB June 10, 2014 Order at 6.

During that process, there has been a small sub-set of protected information that Milliman has asked the DISB to keep from disclosure in light of the competitively sensitive, trade secret, and proprietary analytical tools and methods it reveals. Milliman developed this model on its own in order to provide a service to its clients, and Milliman's stock in trade is the intellectual property contained in its analytical models. There is no basis to justify revealing Milliman's confidential information to Appleseed and its consultant, who is a competitor of both Rector and Milliman.

Appleseed has been provided all information necessary to conduct its analysis and make its arguments. The information it now seeks is protected from disclosure under D.C. law, and the Commissioner is well-suited to analyze this protected information without further advocacy from Appleseed. GHMSI asks that Appleseed's request be denied in its entirety.

Sincerely,

/s/ E. Desmond Hogan

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cc: Randolph Sergent, GHMSI